IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Bail Appl..No. 6447 of 2007(K)

CRIME NO. 185/07 OF PULPALLY POLICE STATION
CMP.1642/2007 of J.M.F.C.-II, SULTHANBATHERY

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PETITIONER/ACCUSED

K.K.MOHANDAS, S/O.KANDAN,
KIZHAKEPUTHENPURAYIL HOUSE, PULPALLY P.O.,
PULPALLY AMSOM, S.BATHERY, WAYANAD.

BY ADV. SRI.LALJI P.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

BY D.G.P. SRI. P.G. THAMBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6447 of 2007

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Dated this the 1st day of November, 2007

O R D E R

Petitioner is the 7th accused (not the second accused as shown in the petition) in a crime registered under Section 55 (a) of the Kerala Abkari Act.

2. This court had occasion earlier to comment adversely on the nature and quality of investigation that was conducted earlier in this crime. The events commenced from the seizure of a lorry loaded with 8540 litres of spirit within the jurisdiction of Pulpally police station on 29.6.2007. Long later, the petitioner has been arrayed as the 7th accused. Investigation is in progress. Altogether eight accused have been shown in the array of accused by now. The petitioner was arrested on 27.9.07.

3. According to the prosecution, now it appears that it is the petitioner, who had planned to bring the lorry to a place

within the jurisdiction of Pulpally police station. Surprisingly it is admitted that the petitioner herein had himself passed on information to the Circle Inspector of Police to facilitate seizure of the very same vehicle.

4. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised against the petitioner or the defence raised by the petitioner. It is the case of the petitioner that in their anxiety to save the real miscreants, the police is now turning against the petitioner, who had actually helped them to have information about the lorry carrying the contraband article. The petitioner relies on a document, and the genuineness of that document is not disputed, which shows that it was the petitioner, who passed on the information about the lorry to the police on a written acknowledgment from the Circle Inspector.

5. The application for bail is opposed by the learned D.G. Prosecutions. In view of the opposition, regular bail can be

granted to the petitioner only if this court is in a position to entertain both the satisfactions contemplated under Section 41A of the Kerala Abkari Act. In the facts and circumstances of this case, I am unable to entertain either of those satisfactions. I am hence satisfied that the petitioner cannot be granted regular bail now.

6. This application is, in these circumstance, dismissed. But I may hasten to observe that the petitioner shall be at liberty to move this court for bail again at a later stage of the investigation, not at any rate, prior to 15.11.2007. The Investigators shall, in the meantime, make every endeavour to complete the investigation.

7. A word about the investigation in this case will not be inappropriate or inapposite. In the earlier order passed in the bail application, this court had occasion to lament about the very unsatisfactory quality of investigation that was conducted. Thereafter, it is submitted that the learned Director General of

Police had passed appropriate orders to ensure that an efficient investigation is conducted in the matter.

8. I have perused the case diary. If this is the quality of efficient investigation that can be achieved even by the Director General of Police, one can shed only tears for the efficiency of the functionaries. The Director General of Prosecutions was requested to go through the case diary in full and apprise this Court as an Officer of the Court whether he is satisfied with the quality of investigation and whether this court should issue directions for getting the investigation conducted by an external agency like the C.B.I. The learned Director General of Prosecutions, after going through the Case Diary, submits that he is not also satisfied entirely with the quality of investigation, but submits that steps shall be taken to ensure that proper investigation is conducted by efficient officials. The said offer does not at all convince me.

9. I need only mention the deplorable state of the case. A lorry is involved in the case. Its engine number was not tampered with. The person, to whom the vehicle was originally sold was ascertained, but even till this date (i.e. from 29.6.2007 to 1.11.2007) the present registered owner of the vehicle, who it is admitted has a number of other vehicles also and has a place of permanent residence, has not been contacted and his version has not been ascertained yet. Though it is stated that the Investigating Officer has made many attempts to contact him, the case diary does not reveal any such attempt. I am certainly of the opinion that the administrative superiors and the political executive cannot close their eyes to the quality of investigation in a case like the instant one. I expect the persons concerned, the Director General of Police and the Minister in charge of the police to look into the case diary and take a decision whether in the interests of justice the investigation must be entrusted to an external agency like the C.B.I. I do so direct as a decision at that level will be required in

this matter. I am certainly dissatisfied with the quality of investigation that is conducted. Unless one is insensitive and callous it will not be possible to remain without response to an investigation like this - even after the earlier directions of this Court. I am certain that a dispassionate consideration of the events must convince the Director General of Police and the powers that be of the need to get a proper investigation conducted by an independent agency. I am not adverting to various inadequacies and improprieties in the investigation now. If necessary the same can be considered in detail later. I leave it now to the learned Director General of Police and the Minister concerned to look into the matter and take proper action. The action taken shall be communicated to this Court. Call on 16.11.2007.

(R. BASANT)
Judge

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